

Application Serial No.: 10/029,413

REMARKS

I. Status Summary

Claims 11, 13-17, 34-37, and 63-64 are now pending in the subject U.S. patent application and have been examined. All objections and rejections presented in the previous Official Action have been withdrawn. One new ground for rejection has been presented.

Claims 11, 13-17, 34-37, and 63-64 have been rejected under 35 U.S.C. § 112, second paragraph, upon the contention that the phrase "biologically active" renders the claims indefinite. Examiner Murphy has indicated that the rejection could be obviated by amending the claim 11 to recite that the protein is "functional".

Claims 1-7, 12, 18-33, 38-41, and 43-62, which were withdrawn from consideration due to applicants' election following a Restriction Requirement, have been canceled. Applicants reserve the right to file one or more divisional applications directed to the subject matter of the canceled claims.

Claim 11 has been amended. Support for the amendment can be found throughout the specification of the application as filed, including particularly on page 13, line 30, through page 14, line 22. No new matter has been added by virtue of the claim amendment.

Reconsideration of the application as amended and based on the remarks set forth below is respectfully requested.

II. Response to the Rejection under 35 U.S.C. § 112, Second Paragraph

Claim 11 has been rejected under 35 U.S.C. § 112, second paragraph, upon the contention that the phrase "biologically active" renders the claim indefinite. According to the Patent Office, the phrase "biologically active" is not defined by the claim, and no definition is given as to what this activity is. However, the Patent Office has indicated that this rejection would be obviated by amending the claims to recite that the protein is "functional".

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Thus, and in accordance with Examiner Murphy's suggestion, applicants have amended claim 11 to replace the phrase "biologically active" with the term "functional". Applicants also respectfully submit that the amendment is solely for the purpose of clarification, and is not to be interpreted as a surrender of any subject matter originally encompassed by the claim. Applicants would also like to thank Examiner Murphy for suggesting this clarifying amendment.

Applicants respectfully submit that as a result of the amendment of claim 11, the instant rejection of claims 11, 13-17, 34-37, and 63-64 has been addressed. Applicants respectfully request that the rejection be withdrawn, and further that the claims be allowed at this time. Applicants respectfully request a Notice of Allowance to that effect.

CONCLUSIONS

Should there be any minor issues outstanding in this matter, the Examiner is respectfully requested to telephone the undersigned attorney. Early passage of the subject application to issue is earnestly solicited.

DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account Number 50-0426.

Respectfully submitted,
JENKINS, WILSON & TAYLOR, P.A.

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By:

Arlie A. Taylor

Arlie A. Taylor, Jr.
Registration No. 39,395

421/29/2 AAT/CPP/acy

Customer No: 25297